



TO: File

FR: David McDonald

RE: Property Rights Issues

Some individuals and groups have raised issues regarding property rights. Certainly property rights are important and have a place in the discussion regarding growth management. However, it is clear that private property rights do not mean that one has the right to do whatever one wants with one's property. In fact, zoning regulations have consistently been upheld as constitutional as long as the individual property owner has use of their land. The term "taking" comes from the final clause of the Fifth Amendment to the Constitution of the United States, which reads: "nor shall private property be taken for public use without just compensation." Washington State has a similar clause in Section 16 of Article I of the state Constitution: "No private property shall be taken or damaged for public or private use without just compensation having been first made...." However, the regulation of land is not a taking, neither is zoning. In addition, the constitution does not guarantee anyone a return on his/her property investment or a specific use of that land.

Over the years, some have attempted to expand the legal definition of takings, especially as to the imposition of zoning or land use regulations. Takings initiatives have been based upon the premise that when government action reduces the value of property, the governmental entity that has taken that action, whether by ordinance, zoning, regulation, legislation, or any other regulatory action, must pay the property owner compensation for the reduced value of the property.

In Washington in 1995, a takings initiative was passed the legislature, I-164, and a coalition of organizations then succeeded in getting that legislation onto the ballot, renamed as Referendum 48. The voters resoundingly defeated that takings initiative, in response to the premise that zoning and other forms of land use regulation provide benefits and protections for the community and for the state and because voters were afraid it would cost them a great deal of increased taxes.

In 2005, another initiative, I-933 was on the ballot. In general terms, I-933 stated the following-- "An agency that decides to enforce or apply any ordinance, regulation or rule to private property that would result in damaging the use or value of private property shall first pay the property owner compensation as defined in Section 2 of this Act. This section shall not be construed to limit agencies' ability to waive, or issue variances from, other legal requirements." The voters resoundingly rejected that initiative 59%-41%. As of this date, there has been no evidence placed in the record that the County's current regulations constitute an unconstitutional taking or that any legally developable lot owner has been denied a development permit.

Moreover, if a lot owner in the rural area is uncertain as to whether a particular lot is legally developable, before the person purchases that lot (or even after) the person can

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pay the county a \$800 fee and get a determination as to why, or why not, the lot is considered to be legally developable. See CCC 40.520.010 and, for a summary, http://www.clark.wa.gov/development/land_use/documents/lot-determination.pdf/. If not developable, then there are provisions within the Code to allow for consideration of development for that lot

Members of CCCU have repeatedly claimed that the rural people were not heard in the previous years regarding the use of their land. Such allegations are simply not true. Three prime examples are: 1) initially, the County supported a minimum lot size north of the resource line of 10 acres but that was ultimately (despite orders from the WWGMHB) reduced to Rural 5 minimum, 2) the 35,000 acres (10% of the total land mass of the county) was removed from resource land during "Poyfair Remand" and 3) almost 3000 acres of rural lands were placed in our Rural Centers to provide some commercial and industrial lands in the rural area. In addition, the County put together a Forest Conversion Task Force (of which I was a member) to overhaul the Forest Practices portion of the county code and those changes provided relief to foresters in the rural area including creating Conversion Harvest Option Plans. Other individuals within the rural area had their resource lands "de-designated" and, eventually annexed in 2007. This list does not include many changes that were made to development regulations, including Wetlands Ordinance and CARA ordinance with input from rural residents. I am not aware of any "takings" lawsuits filed against the County related to the zoning of property under the County Comprehensive plan.

Clark Co Transportation Capital Facilities Plan

Location	From	To	2007 CFP Cost	2014 CFP Cost	2014 Change
TIP Projects 2007-2012					
NE 63rd St	Andresen Rd	I-205	\$ 5,095,000		Completed
NE 72nd Ave	N of NE 88th St	NE 110th Street	\$ 7,227,000		Completed
NE 88th St	St Johns	Andresen	\$ 5,897,000		Completed
NE St Johns Road	NE 50th Ave	NE 72nd Ave	\$ 13,771,000		Completed
NE Ward Road	NE 172nd Ave	Davis Rd	\$ 11,344,000		Removed
Salmon Ck Interchange			\$ 39,292,000		Phase 1 Completed
NE 10th Ave	NE 141st St	NE 149th St	\$ 3,871,000		Completed
NE 10th Ave	NE 149th St	NE 164th St	\$ 7,213,000	\$ 22,000,000	Included in 2014 CFP, Revised Scope
NE 99th St	NE 94th Ave	NE 117th Ave	\$ 9,476,000	\$ 7,500,000	Included in 2014 CFP, Revised Scope
Hwy 99	NE 99th St	NE 119th St	\$ 21,622,000	\$ 8,800,000	Included in 2014 CFP, Revised Scope
NE 94th Ave	Padden Parkway	NE 119th St	\$ 19,325,000	\$ 7,755,000	Included in 2014 CFP, Revised Scope
NE 88th St	Hwy 99	St Johns Rd	\$ 12,807,000		Completed
NE 99th St	NE 72nd Ave	NE 94th Ave	\$ 11,210,000		Removed
NE 99th St	NE 117th Ave	NE 137th Ave	\$ 5,380,000		Completed
NE 119th St	Salmon Crk Ave	NE 72nd Ave	\$ 12,176,000	\$ 8,239,000	Included in 2014 CFP, Revised Scope
NE/NW 199th St	NW 11th Ave	NE 10th Ave	\$ 4,400,000		Removed
NE 99th St	St Johns Rd	NE 72nd Ave	\$ 15,885,000		Removed
St Johns Rd	NE 68th St	NE 50th Ave	\$ 16,328,000		Removed
NE 119th St	NE 72nd Ave	NE 117th Ave	\$ 26,220,000	\$ 15,000,000	Included in 2014 CFP, Revised Scope
NE 179th St	E of Union Ave	NE 29th Ave	\$ 12,549,000		Removed
Bridges & Misc Projects			\$ 15,527,000	\$ 50,000,000	Included in 2014 CFP, Revised Scope
Other MTP Projects					
Andresen/Padden	Interchange		\$ 52,000,000	\$ 15,000,000	Included in 2014 CFP
Padden/SR-503	Interchange	County share	\$ 13,000,000		Removed
Hwy 99	South RR Bridge	NE 63rd St	\$ 5,460,000		Removed
NW 179th St	I-5	NW 11th Ave	\$ 18,850,000	\$ 15,000,000	Included in 2014 CFP, Revised Scope
NE 179th St	NE 29th Avenue	NE 72nd Ave	\$ 37,700,000	\$ 5,000,000	Included in 2014 CFP, 179th Intersections Combined
NE 179th St	NE 72nd Ave	Cramer Road	\$ 20,358,000		Removed
NE 179th St	NE Cramer Rd	NE 112th Ave	\$ 5,881,200		Removed
Hwy 99	NE 119th St	NE 129th St	\$ 11,310,000		Completed
NE 50th Ave	Lalonde Dr	NE 119th St	\$ 11,762,400		Removed
NE 119th St	SR-503	NE 172nd Ave	\$ 19,113,900		Removed
NE 15th Ave	NE 179th St	SR-502	\$ 6,559,800	\$ 7,000,000	Included in 2014 CFP, Revised Scope
NE 88th St	Hazel Dell Ave	Hwy 99	\$ 11,077,800		Removed
NW 11th Ave	NW 139th St	NW 146th St	\$ 11,463,300		Removed
NE 199th St	NE 10th Ave	NE 72nd Ave	\$ 31,668,000		Removed
NE 99th St	NE 137th Ave	NE 172nd Ave	\$ 19,905,600		Removed
Other Priority Projects					
Salmon Ck Interchange Ph II			\$ 35,000,000	\$ 17,500,000	Included in 2014 CFP
NE 20th/15th Ave	NE 154th St	NE 15th Ave	\$ 8,655,000		Removed
NE Hazel Dell Ave	NE 99th St	NE 114th St	\$ 3,000,000		Removed
NW 119th St	NW 7th Ave	NW 16th Ave	\$ 8,655,000		Removed
NE 10th Ave	NE 164th St	Fairgrounds Ent	\$ 4,524,000		Removed
NE 29th Ave	NE 134th St	NE 179th St	\$ 4,000,000		Removed
Proposed Mitigation Projects					
NE 72nd Ave	NE 133rd St	NE 219th St	\$ 55,159,000	\$ 30,000,000	Included in 2014 CFP, Revised Scope
NE 137th / 142nd Ave	NE 119th St	NE 173rd Circle	\$ 33,930,000		Removed
NE 152nd Ave	Ward Rd	NE 99th St	\$ 11,310,000		Removed
Ward Rd	NE 162nd Ave	NE 182nd Ave	\$ 18,850,000	\$ 9,700,000	Included in 2014 CFP Revised Scope
NE 50th Ave	NE 119th St	NE 179th St	\$ 33,930,000		Removed
NE 182nd Ave	NE 159th St	NE 174th St	\$ 3,016,000		Removed
Intersection Improvements	Various locations		\$ 52,000,000		
On-going Programs			\$ 127,500,000		On-going Programs specified in 2014 CFP
New Projects in 2014 CFP					
NE 47th Ave @ NE 78th St	Intersection		\$ 1,800,000		Added
Traffic Signal Optimization Projects (5)	Various		\$ 6,120,000		Added Location Specific
NE 47th Ave	NE 68th St	NE 78th St	\$ 3,417,000		Added
NE 99th St @ SR 503	Intersection		\$ 2,269,000		Added
Salmon Ck Ave	WSU Entrance	NE 50th Ave	\$ 12,100,000		Added
NE 119th St	NE 87th Ave	NE 112th Ave	\$ 26,200,000		Added
Urban Arterial Intersections	Various		\$ 15,000,000		Added On-going Program
NE 182nd Ave @ SR-500	Intersection		\$ 1,000,000		Added
NE 99th St	NE 107th Ave	SR 503	\$ 1,000,000		Added
NE 10th Ave	NE 149th St	NE 154th St	\$ 2,100,000		Added
Road Preservation		\$ 7,000,000	\$ 140,000,000		Added, On-going Program
Rural Road Improvement Program		\$ 2,000,000	\$ 40,000,000		Added, On-going Program
Sidewalks and ADA		\$ 600,000	\$ 12,000,000		Added, On-going Program
Transportation Safety Imp		\$ 1,000,000	\$ 20,000,000		Added, On-going Program
Urban Development/Road Prgm		\$ 1,250,000	\$ 25,000,000		Added, On-going Program
Traffic Signal Optimization		\$ 300,000	\$ 6,000,000		Added, On-going Program

Total 20 Yr Cost \$ 952,254,000 \$ 532,500,000